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Supreme Court, U.S.
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No. 1127

In the Supreme Court of the United States

OCTOBER TERM, 1967

CHENG KAI FU, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1123

CHENG KAI FU, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner is a native of China who entered the United States in October 1964 as a crewman holding seaman's papers from Hong Kong. He overstayed his leave and, after a hearing, was ordered deported in April 1965. After the Republic of China on Formosa refused to issue a travel document to that country, the proceedings were reopened and Hong Kong was designated as the place of deportation. Petitioner was ordered to surrender himself for deportation to Hong Kong in October 1967.

Petitioner moved to open the deportation proceedings so that he could apply for a stay of deportation

293-615—68

under Section 243(h) of the Immigration and Nationality Act, 8 U.S.C. 1253(h), which authorizes the Attorney General to withhold deportation of an alien to a country in which the alien "would be subject to persecution on account of race, religion, or political opinion". In support of his application, petitioner recited the circumstances of his escape from the mainland of China in 1957, his anti-Communist attitude, and his belief that a return to Hong Kong would subject him to economic hardship. The Board of Immigration Appeals denied the motion to reopen. On petition for review, the Court of Appeals for the Second Circuit affirmed the order (Pet. App.).

There is no occasion for review by this Court. As the court below held (Pet. App. 15), petitioner has failed to make even a *prima facie* showing that he would be subject to persecution in Hong Kong on account of race, religion, or political opinion. Petitioner's contention that the situation in Hong Kong is deteriorating to such a degree that it must be anticipated that Hong Kong will fall from British hands to the Communists, is, as the court below observed (Pet. App. 15) "too speculative" to support a finding of danger of persecution. Petitioner's other contention—that the amendment of Section 243(h) in 1965 makes him eligible for relief—misreads the purpose of the statute and the amendment. Before the amendment, Section 243(h) authorized the Attorney General to withhold deportation if in his opinion the alien would be subject to "physical persecution" in the

country to which he was to be deported. The 1965 amendment recognized that techniques of persecution "are not limited to bodily violence alone" H. Rep. No. 745, 89th Cong. 1st Sess., p. 22. Thus, under the amendment, an alien may obtain relief by showing that the form of persecution directed against him for his religious or political opinions would be economic—for example, by depriving him of any opportunity to earn his livelihood. The amended statute, however, like the original, requires that there be a showing of danger of "persecution". The fact that petitioner might face difficult economic conditions in Hong Kong does not indicate that he will be singled out for persecution by that government.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1968.

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*We are advised that a private bill has been introduced in Congress on petitioner's behalf. In such circumstances, it is the Service's practice to stay deportation pending Congressional consideration.

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